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COMMITTEE AGAINST TORTURE

Seventh session

SUMMARY RECORD OF THE 98th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 18 November 1991, at 3 p.m.

Chairman: Mr. VOYAME

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The meeting was called to order at 3.05 p.m.

PREPARATORY ACTIVITIES RELATING TO THE WORLD CONFERENCE ON HUMAN RIGHTS (agenda item 7) (A/RES/45/155; A/CONF.157/PC/6/Add.4 and A/CONF.157/PC/13)

1. The CHAIRMAN said that the World Conference on Human Rights would be held in Berlin in 1993 and that the Committee against Torture had been invited to take part in the Preparatory Committee of the Conference. Ms. Chanet had represented the Committee at the first meeting of the Preparatory Committee, which had been held from 9 to 13 September 1991; and Ms. Diaz Palacios had been the alternate member.

2. Since Ms. Chanet and Ms. Diaz Palacios were not standing for re-election to the Committee, Mr. Sorensen and Mr. Mikhailov had been appointed representative and alternate, respectively, to the Preparatory Committee.

3. He read out the list of documents received by the Committee against Torture: General Assembly resolution 45/155 of 18 December 1990 (A/RES/45/155), Commission on Human Rights resolution 1991/30 of 5 March 1991, recommendations submitted by the Human Rights Committee and the Committee on the Elimination of Racial Discrimination (A/CONF.157/PC/6/Add.4), the report of the Preparatory Committee for the World Conference on Human Rights (A/CONF.157/PC/13) and the unofficial text of Ms. Chanet's statement to the first preparatory meeting.

4. Speaking as a member of the Committee, he asked Ms. Chanet whether, in the light of experience, she considered that the Committee against Torture should have held a discussion beforehand and given its representatives instructions and whether she thought that it would be useful to submit written recommendations to the Preparatory Committee, as other committees intended to do.

5. Ms. CHANET, reporting on her participation as an observer in the Preparatory Committee for the World Conference on Human Rights, which had met in Geneva from 9 to 13 September 1991, and replying to the Chairman's questions, said she agreed that a preliminary discussion was necessary, since the person who was supposed to represent the Committee required, if not strict instructions, at least some guidelines. Such a discussion had in fact taken place at the April session. It would also be very useful to submit written recommendations to the Preparatory Committee.

6. With regard to procedure, she drew attention to the list of States represented at the first meeting of the Preparatory Committee (p. 3 of the Preparatory Committee's report). Some least developed countries had found it difficult to send representatives and the secretariat had been requested to deal with that problem so that all countries could be represented at later meetings of the Preparatory Committee. She pointed out that the Committee against Torture was listed under "Human rights bodies", as though it had been hard to find a generic term to describe all the bodies active in that field. An impressive number of non-governmental organizations had attended the meeting.

7. The Preparatory Committee had elected its officers. Mrs. Warzazi had been elected Chairman. The vice-chairmen were eminent persons from Venezuela, China and Ireland and the rapporteur was Polish. The Preparatory Committee's work had consisted mainly in hearing the many statements which had been made by States and non-governmental organizations and the texts of which were not yet available.

8. As mentioned in annex II of its report, the Preparatory Committee had decided that the World Conference should be convened in Berlin for two weeks in 1993. Meanwhile, the Preparatory Committee would meet twice in 1992, including once at the end of March, and once in 1993. Regional meetings would also be held in preparation for the Conference.

9. In substance, the statements by States had contained no surprises: there had been, a confrontation of traditional concepts of human rights. Some countries had hardly changed their position at all, but others had reached a turning point, which was a good omen for the Conference.

10. The most specific substantive issue discussed at the first meeting of the Preparatory Committee had been that of studies. She referred to annex II, page 9, of the report of the Preparatory Committee, which proposed an update of the compilation of international instruments and of United Nations action in the field of human rights, as well as the inclusion in the documents of the Conference of reports of meetings organized under the auspices of the United Nations human rights programme. A sensitive issue that would give rise to a serious problem of political strategy was the preparation of a limited number of short, analytical and action-oriented studies on the topics proposed by the General Assembly. It was stated that those studies should be prepared "Bearing in mind ... statements" made at the first meeting of the Preparatory Committee, but those statements were so contradictory that it would be difficult to follow that instruction.

11. She recalled that, according to General Assembly resolution 45/155, the aim of the Conference was to assess progress in the field of human rights since the adoption of the Universal Declaration of Human Rights, to examine the relation between development and the enjoyment by everyone of each of the rights, to examine ways and means to improve the implementation of existing human rights standards and instruments, to evaluate the effectiveness of the methods and mechanisms, to formulate concrete recommendations for improving the effectiveness of activities and to make recommendations for ensuring the necessary financial and other resources.

12. Everyone attending the Preparatory Committee had been able to address it, but she had been one of the few to make specific proposals. She had described the Committee against Torture, its functions and the way it worked and explained that it was at a turning point between two crucial periods, the first when international human rights instruments had proliferated and the second, now starting, when new demands and aspirations were coming to the fore. Despite all the instruments, however, many grave violations still occurred. There were also too many States that had either not acceded to those instruments or had done so, but had failed to fulfil their obligations. That was all the more serious in that it affected citizens who were unaware of their rights and could therefore not protect themselves.

13. She had argued that the World Conference should make a specific assessment of the ways and means available to it and be given the brief to approach its work in three different ways: first, States should be encouraged to accede to existing instruments without reservations. Secondly, new approaches should be explored in order to ensure broader and more specific observance of human rights and to consider the establishment of new structures to provide an immediate response in situations of flagrant and massive human rights violations. Thirdly, the questions of information and communication, education, technical assistance and research should also be a priority in the work of the Conference. There was a need to update structures and put all modern resources, including computer science, at the service of human rights. The United Nations would also need regional and national relays to make its work more efficient. Consideration might, for example, be given to the establishment of national human rights commissions, with specific powers to make proposals, hold consultations and disseminate information. Moreover, technical assistance and advisory services lacked coordination and would be more effective if they were expanded.

14. She had pointed out that those proposals could be implemented only if the human and financial resources of the Centre for Human Rights were strengthened. It might even be possible to consider setting up a genuine institute for human rights which would be responsible for human rights education, training and research. In conclusion, she had called for the mobilization of all energies: those of the United Nations, of States, of non-governmental organizations, of specialized agencies and of international treaty monitoring bodies.

15. The Preparatory Committee seemed to have heeded her advice, for, in document A/CONF.157/PC/13, it had decided to recommend that the General Assembly should encourage all those bodies to take part as observers in the work of the Preparatory Committee and the Conference.

16. She had not been aware of any difference between the status of observer and that of participant in the Preparatory Committee and considered that it would be necessary to be sure that observers at the Conference would be able to express their opinions and, for example, to defend the positions of the Committee against Torture.

17. The Conference was to take place in 1993. For the time being, matters did not seem to be moving very fast. To be effective, the proposed studies must be carried out, for they would form the very substance of the Conference. She requested Mrs. Klein, the representative of the Secretary-General, to give a progress report on preparation and coordination of the studies.

18. Mrs. KLEIN (Representative of the Secretary-General) said that the General Assembly, which was currently in session in New York, was considering the report of the Preparatory Committee for the World Conference on Human Rights and the budget of the World Conference. At the Centre for Human Rights, a core group of about five persons had been set up to assist Mr. Pace, the Secretary of the Preparatory Committee. Work had been suspended pending the decisions of the General Assembly, particularly with regard to financing.

19. The CHAIRMAN invited the members of the Committee to exchange views and state their positions on the idea of submitting written recommendations to the Preparatory Committee. He suggested that a small group consisting of Ms. Chanet, Mr. Sorensen and Mr. Mikhailov should be set up to draft the text.

20. Mr. SORENSEN said that he had been struck by the confrontation between the different concepts of human rights mentioned by Ms. Chanet. The Committee against Torture had much to say on that matter, since everyone, regardless of his view of human rights, believed that torture must be condemned. Action to combat torture might therefore be the basis for an agreement. Human rights were often abstract, whereas torture was something very specific that everyone rejected. That was why the Committee against Torture should play a leading role in the Conference.

21. He agreed with Ms. Chanet about the importance of the role of information, communication, training and research. He also stressed the need to create general awareness. At the Conference, people must be made to understand that torture was not a medieval institution, but was still being practised in some 60 countries at least. They must be made to understand how crucial torture was for democracy, since it was very difficult to have a dictatorship without torture and just as difficult to have a genuine democracy that did practise torture. It was therefore essential for the Committee against Torture to emphasize substantive issues and not become bogged down in procedural matters.

22. The CHAIRMAN suggested that the discussion should be resumed the next day. He nevertheless requested the small working group that had been appointed to start thinking about the content of a possible resolution or recommendation by the Committee, which might be approved in principle the following day.

23. Mr. GIL LAVEDRA said that the treaty monitoring bodies participating in the Conference should concentrate on the specific problems with which they were concerned. He endorsed Mr. Sorensen's suggestion that the Committee's text should deal with the specific question of torture and proposed that it should include Ms. Chanet's idea about mechanisms for improving the operation of international instruments. Consideration should also be given to concrete and practical ways of making States aware of those instruments.

24. Mr. MIKHAILOV said that he agreed to take part in the drafting group and suggested that it should meet the next day before the Committee's morning meeting.

25. Ms. CHANET said that she would unfortunately not be able to take part in preparing the draft resolution at such short notice because her duties as country rapporteur for Cameroon required her to spend her time studying the report submitted by the Cameroonian authorities.

26. Mr. SORENSEN said that he shared Ms. Chanet's doubts about the possibility of preparing a soundly based recommendation in so short a time. It was better not to have any recommendation at all than to submit an unsatisfactory text which might be contrary to the objective sought. Since

the precis-writers' work was so accurate, he suggested that the Committee should start by studying the record of the present meeting, which would summarize the main arguments put forward by each member.

27. Mr. MIKHAILOV, suggesting that the composition of the working group responsible for preparing the draft recommendation should be changed, said that he would give Mr. Burns his place so that the members of the group could communicate more easily and agree on a draft in a common language, namely, English. If a third person was needed, Mr. Gil Lavedra might help out.

28. Mr. BURNS said that the work of Mr. Sorensen and Mr. Mikhailov could be simplified by requesting them to prepare a draft recommendation on the basis of Ms. Chanet's suggestions and Mr. Gil Lavedra's proposal to focus the text on the concept of torture, which was central to the Committee's terms of reference.

29. Mr. GIL LAVEDRA said he doubted whether it would be really useful to ask the working group to prepare a draft text which would then have to be translated into various languages before being submitted to the members of the Committee again for discussion on form and substance. Time could be saved by asking all members to do the groundwork and, in a discussion of about half an hour, clearly formulate the points that they would like to have included in the draft text. Mr. Sorensen and Mr. Mikhailov would then only have to summarize them in a very short text of about one page.

30. The CHAIRMAN suggested that the members of the Committee should adopt Mr. Gil Lavedra's idea and take up the discussion on the content of the recommendation again briefly at a future meeting. He would be grateful if Mr. Sorenson and Mr. Mikhailov would draft a text with the assistance of the Secretary of the Committee.

31. The meeting was suspended at 4 p.m. and resumed at 4.10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Initial report of Bulgaria (CAT/C/5/Add.28) (continued)

32. At the invitation of the Chairman, Mr. Djambazov (Bulgaria) took a place at the Committee table.

33. Mr. DJAMBAZOV (Bulgaria) said he regretted that he had not been given much time to prepare sufficiently detailed replies. He therefore invited the members of the Committee to ask him further questions in case any points might not be clear.

34. In reply to Mr. Khitrin, he said he had already pointed out in his oral introduction to the report (CAT/C/5/Add.28) that there were still some gaps in the Bulgarian Penal Code. He was aware that the legislation did not specifically penalize persons who inflicted mental and psychological torture. He nevertheless noted that, under article 5 of the new Constitution, the provisions of the Convention could be directly invoked, as it had become an

integral part of domestic legislation. That article would offset some of the omissions in criminal legislation until such time as the current reform had been completed.

35. In reply to members who had asked him for further information on difficulties in fully implementing the Convention in Bulgaria, he said that, until the new Constitution had entered into force, international instruments could be implemented only after the adoption of a specific enabling act. That obstacle had now been overcome, as the new Constitution expressly provided for the direct application of any international instrument ratified by Parliament.

36. Other difficulties nevertheless remained. The Convention against Torture did not, for example, propose specific penalties. It would therefore be necessary to wait until the draft penal code and the draft code of criminal procedure, which were expected to be adopted in the first half of 1992, had established penalties in keeping with the gravity of offences.

37. In reply to the members who had asked him whether there was a specific law protecting Bulgarian nationals from degrading treatment, he said that, although no text had been adopted for that purpose, citizens of the Republic of Bulgaria enjoyed various types of protection, the most important of which were the guarantees embodied in the Constitution. The possibility available to a person who had been arrested of being represented by his legal counsel in the early stages of the preliminary investigation was one form of protection, and the disciplinary measures provided for in some articles of the Penal Code, particularly articles 282, 285 and 287, were another. The direct application of the Convention in Bulgaria and the obligations it imposed also protected citizens against all types of abuse. Such guarantees were, however, far from adequate and the new penal legislation would ensure that they were improved and extended.

38. In reply to a question concerning penalties under the Penal Code and, in particular, penalties not involving deprivation of liberty, he read out the penalties listed in article 37, paragraph 1. In addition to deprivation of liberty, such penalties might take the following forms: corrective labour without deprivation of liberty; confiscation of property; fines; restricted residence without deprivation of liberty; deprivation of the right to hold a particular rank or exercise a particular function in public affairs; deprivation of the right to exercise a particular profession or activity, of the right to reside in an inhabited area and of the right to receive decorations, honorary titles or distinctions; military demotion; or public reprimand.

39. In reply to members who had asked whether State officials or members of the police who committed acts prohibited by the Convention were prosecuted and punished, he said that, in 1990 and 1991, 45 generals and 49 senior officers who had held posts of responsibility in the territorial and central police services had been dismissed, as had about one third of the officials of such services, particularly for having committed abuses of power during the assimilation campaign during which the names of some Bulgarian Turks and Muslims had been changed by force. Former communist party leaders and members of the Government had also been brought to justice and 12 of them were still under investigation.

40. Replying to the questions about medical treatment for persons who were not legally responsible or who were mentally deficient (para. 22 of the report), he said that all psychiatric hospitals in the country came under the Ministry of Health. Very strict measures had, moreover, been taken to prevent any interference or intervention by the police in such institutions. He nevertheless noted that no act of torture or degrading treatment had ever been reported in any centre for psychiatric treatment. In that connection, he pointed out that a special committee of the Interparliamentary Union had visited Bulgaria in 1984-1985 to conduct an inquiry in such institutions and it had not mentioned any reprehensible act in its report.

41. Judges were solely responsible for preliminary investigations. The State security service had been dissolved in early 1991 and it was therefore impossible for security officials to open an investigation.

42. With regard to the functions of the Prosecutor's Office, he referred to article 127 of the new Constitution, which stated that it was the duty of the Prosecutor to ensure that the law was respected. "Waging the struggle against crimes" (para. 31) was therefore not part of his duties. The question put by Mr. Khitrin suggested that there might be a mistake in the Russian version of the report submitted by the Bulgarian Government.

43. In reply to questions concerning paragraph 33 of the report, he said that the persons reported as being in penal establishments were in pre-trial detention. Conditions of detention were often better in prisons than in police stations. Moreover, the Penalties Enforcement Act provided for a special prison labour system whereby two days of work were equal to three days in prison. It was therefore easy to understand why the prison system was preferred. Untried prisoners who worked in prison were separated from other prisoners and enjoyed all the rights guaranteed by the Penalties Enforcement Act as long as they were in a penal establishment. They could therefore listen to the radio and watch television in their cells and there was no surveillance of their mail.

44. With regard to extradition, paragraphs 60 and 61 of the report showed that Bulgarian legislation was not in keeping with article 3 of the Convention. Now that the Convention had become part of domestic law, however, the gaps would have to be filled. Despite the gaps in the relevant Bulgarian regulations, moreover, there had not been any specific violation of article 3 of the Convention. Bulgaria was prepared to accede to the European Extradition Convention, and that would probably help it improve its legislation and practice. In that connection, he recalled that paragraph 69 of the report stated that the Penal Code was applicable to aliens who had committed crimes abroad which affected the interests of Bulgaria. The general offences referred to in paragraph 69 were not defined in the Bulgarian Penal Code, but they could be taken to include offences representing a danger for society.

45. Article 287 of the Penal Code related to crimes against justice which were committed by public officials in the exercise of their functions: on that point, he recognized, as indicated in paragraph 66 of the report, that the provisions of Bulgarian legislation were not expressly in conformity with the Convention.

46. In Bulgaria, there was no examining magistrate as such, but only "investigators". Drawing inspiration from the French system, the experts who had drafted the Constitution had urged that investigations should be the responsibility of judges, but Parliament had objected. None the less, unlike what had happened under the preceding regime, investigators no longer came under the Ministry of the Interior, but belonged to a separate administrative department.

47. As to the maximum duration of custody, while 10 days was the period provided for in the Code of Criminal Procedure, it was only 24 hours under article 30, paragraph 3, of the new Constitution. The latter provision obviously took precedence.

48. In reply to Mr. Khitrin's question on the implementation of article 7 of the Convention, he said that the country rapporteur for Bulgaria must have been misled by a translation mistake in the Russian version of paragraph 77 of the report because, in that regard, the provisions of the Code of Criminal Procedure were in conformity with the Convention.

49. Referring to the training of medical personnel, he said that the Ministry of Health, the Ministry of Justice and the Prosecutor's Office had requested assistance from the Council of Europe and the European Committee for the Prevention of Torture to develop a programme for that purpose. It would probably be a good thing if the Committee was also involved with the programme.

50. It was true that Bulgarian legislation did not provide for a preliminary medical examination at the time of imprisonment, but since the Convention was now applicable nationally, that situation could only improve. In Bulgaria, not only the Standard Minimum Rules for the Treatment of Prisoners, but also the European rules, which were even stricter, were in force. In the spring of 1990, a delegation of the Council of Europe had visited two Bulgarian prisons and had found no breach of those rules.

51. He admitted that there had been acts of brutality in Bulgarian prisons and indicated that, for offences of that kind, two prison guards had been put on trial and four others had been dismissed.

52. Turning to the questions put by Ms. Chanet, he said that the Prosecutor's Office was responsible only for supervising the work of the prosecutors. The relationship between prosecutors and investigators was governed by law and the former ensured only that the activities of the latter were in conformity with the law. Compulsory medical measures for persons who were not legally responsible (para. 22 of the report) applied, as in most countries, only in cases where they were necessary and it was up to a judge to decide on their application. He did not think that such measures had ever been applied in the case of excessive tobacco consumption.

53. The term "antisocial behaviour" in paragraph 34 of the report referred to offences committed by minors who had not reached the age of criminal responsibility and who could not therefore be brought before the courts. Replying to Ms. Chanet's question about sentences against officials of the

preceding regime who had been found guilty of taking bribes, he said that Parliament had adopted an amnesty act, but it did not apply to the most serious violations of the Convention.

54. Capital punishment was a serious problem, and not only in Bulgaria. Since 1989, Parliament had adopted a moratorium on capital punishment, but that did not mean that that sentence could not be handed down. He would therefore not go so far as to state, as Mr. Burns had, that capital punishment had practically been abolished in Bulgaria.

55. With regard to article 2 of the Convention, the Constitution and Bulgarian criminal law were both categorical about the right of a subordinate not to carry out an unlawful order. Article 57, paragraph 3, of the Constitution provided that that right applied even in situations of armed conflict, which could in no case abolish the fundamental rights of citizens.

56. Ms. Chanet had also asked which measures the Bulgarian Government intended to take in order to improve the implementation of article 8 of the Convention. Public officials did not have to have a new legislative text adopted for that purpose because the Convention was now directly applicable in Bulgaria, which was, as already indicated, about to accede to the European Convention for the Prevention of Torture and could also review agreements concluded with other countries.

57. In accordance with article 10 of the Convention, the Bulgarian Government wanted to improve the training of prosecutors, investigators and military, medical and prison personnel. To that end, it would like to implement the Council of Europe's Demosthenes Programme. The Standard Minimum Rules and the European Rules had been disseminated in all prisons, specifically for detainees. During Mr. Martenson's visit to Bulgaria some months previosuly, it had been decided that training seminars on human rights should be organized for Bulgarian experts and officials. The first seminar would take place in the second half of January 1992. Thanks to United Nations assistance, 10,000 copies of the United Nations compilation of human rights instruments had been disseminated in Bulgarian. In addition, the Ministry of Justice had set up a training programme specifically for prison staff.

58. According to the Amnesty International report, no case of torture or ill-treatment had been reported in Bulgaria since 1989. The cases referred to in the letter quoted by Ms. Chanet dated back to an earlier period; the persons concerned - Bulgarians belonging to the Turkish minority - had been released at the end of 1990.

59. In reply to a request for clarifications concerning paragraph 89 of the report, he explained that a distinction should be made between, on the one hand, the actions or acts of agents acting directly on behalf of the State which engaged the liability of the State and, on the other, the actions or acts of persons serving in economic or public organizations, such as trade unions, which did not engage the liability of the State. Bulgaria still had a fairly large number of public organizations which were not regarded as State bodies.

60. A member of the Committee had asked what was meant by crimes against peace and humanity. They included incitement to and preparation for war, the destruction of population groups and genocide (chap. 14 of the Penal Code).

61. He did not share Mr. Perlas' view that legislative reform could be carried out only with the support of citizens; the Bulgarian authorities would do their best to ensure greater respect for human rights through a change in attitudes and behaviour. He thanked Mr. Sorensen for his recommendations and said that the Bulgarian authorities would try to take the necessary measures with regard to the training of law enforcement officials and the rehabilitation of torture victims. The Committee's assistance would be of great value in that regard.

62. Replying to Mr. Burns, he confirmed that no one could be convicted on the basis of a statement obtained by torture; that was in line with the very spirit of the Constitution.

63. The amnesty act provided for the full rehabilitation of victims. The Government had allocated 120 million leva for the compensation of victims. For a country in a difficult economic situation, that was quite a large amount. Property that had been taken away from citizens was also being given back to them. No special body was responsible for investigating the situation of Bulgarians of Turkish origin; inquiries were conducted by local authorities, the Prosecutor's Office or officials of the investigation department.

64. Medical measures were applied only on the basis of a decision by the Prosecutor's Office or the judge. The Prosecutor's Office was responsible for monitoring the enforcement of judicial decisions and ensuring that conditions of detention were in conformity with the law.

65. Referring to the competence of the Supreme Court, which would in future be known as the Supreme Court of Cassation, he said that it played a role in coordinating and harmonizing jurisprudence. Its decisions were binding on all other courts and members of the Government.

66. In reply to a question about crimes against the Republic, he said that there was a special chapter in the Penal Code on that category of crime, which included treason, espionage and sabotage. In addition, the camps to which Mr. Dipanda Mouelle had referred had been eliminated two years previously. He had every hope tht that type of repressive structure would never again exist in Bulgaria.

67. With regard to the monitoring of the constitutionality of the laws, he pointed out that, for the first time in its history as a State, Bulgaria had established a Constitutional Court, was competent to take decisions on the constitutionality of the laws and, as appropriate, suspend the application of unconstitutional laws. Supervision by Parliament took place at another level; it could, for example, suspend the application of a ministerial decision if it was contrary to the Constitution. The role of the Constitutional Court was also essential in relation to international instruments because all of the international instruments to which Bulgaria wished to become a party had to be submitted for review to the Constitutional Court before being submitted to Parliament for ratification. That procedure was based on the French system.

68. Referring to the organization of the judiciary, he explained that, until now, the judicial system had consisted of a Supreme Court, 28 regional courts, 5 military court sand 118 district courts. The new Constitution had established a Supreme Court of Cassation, a Supreme Administrative Tribunal, courts of appeal, regional courts, military courts and district courts.

69. The CHAIRMAN proposed that, in view of time constraints, the consideration of the report of Bulgaria should be continued at the next meeting, if the Bulgarian delegation so agreed and if there were no objections.

70. It was so decided.

The meeting rose at 6 p.m.